

EXHIBIT 1

1
2 IN THE UNITED STATES DISTRICT COURT
3 FOR THE DISTRICT OF WYOMING

4 WILLIAM JEROME RUTH, individually,
5 and as Wrongful Death Representative
6 of the ESTATE OF CYNTHIA SHOOK RUTH,

7 Plaintiff,

8 V.

9 BEARTOOTH ELECTRIC COOPERATIVE, INC.,
10 a Montana Corporation, and ASPLUNDH
11 TREE EXPERT, LLC, a Limited Liability
12 Company formed in Pennsylvania,

13 Defendants.

14
15 DEPOSITION OF ERIC ELTON
16 May 16, 2023
17 8:30 a.m.

18
19 PURSUANT TO THE UNITED STATES RULES OF FEDERAL
20 PROCEDURE, this Deposition was:

21
22 TAKEN BY: Kenneth E. Barker, Esq.
23 Attorney for Plaintiff

24
25 REPORTED BY: Barbara Jean Morgenweck, RPR, CCR
NCRA, RPR
New Mexico CCR #526

1 APPEARANCES:

2

3 On behalf of the Plaintiff:

4

5 Kenneth E. Barker
6 BARKER LAW FIRM, LLC
7 10956 SD Highway 34
8 Belle Fourche, South Dakota 57717
9 605-723-8000
10 Kbarker@barkerlawfirm.com

11 Robert Pahlke
12 THE ROBERT PAHLKE LAW GROUP
13 2425 Circle Drive, Suite 200
14 Scottsbluff, NE 69361
15 308-633-4444
16 Rgp@pahlkelawgroup.com

17 Ian Keith Sandefer
18 SANDEFER & WOOLSEY, TRIAL LAWYERS, LLC
19 143 North Park Street
20 Casper, WY 82601
21 Phone: (307) 232-1977
22 Ian@swtriallawyers.com

23 On behalf of Defendant Beartooth Electric
24 Cooperative, Inc.:

25 Henry F. Bailey, Jr.
26 BAILEY STOCK HARMON COTTAM LOPEZ, LLP
27 6234 Yellowstone Road
28 Cheyenne, Wyoming 82003
29 Hank@performance-law.com
30 Andy@performance-law.com

31 On behalf of Defendant Asplundh Tree Expert, LLC:

32

33 A. David Bona
34 CARLSON CALALDINE & PETERSON, LLP
35 One Post Street
36 San Francisco, CA 82601
37 Dbona@ccplaw.com

38

1 ERIC ELTON,

2 Having first been duly sworn, testified as
3 follows:

4 EXAMINATION

5 BY MR. BARKER:

6 Q. Good morning, Mr. Elton. How are you?

7 A. Good. Yourself?

8 Q. Good. You ready to go to work?

9 A. I am.

10 Q. Okay. Good. Please state your name for
11 the record.

12 A. Eric Lance Elton.

13 Q. Mr. Elton, where are you from?

14 A. Red Lodge, Montana.

15 Q. Is that where you live?

16 A. Yes.

17 Q. Is that where you work?

18 A. Yes.

19 Q. Who do you work for?

20 A. Beartooth Electric Cooperative.

21 Q. How long have you worked for Beartooth?

22 A. Almost 29 years.

23 Q. What is your current position?

24 A. Line superintendent.

25 Q. Twenty-nine years ago, beginning in what

1 you've done a wonderful job -- is I have to ask
2 the question and there needs to be a brief pause
3 before you answer if that's okay.

4 A. Okay.

5 Q. The worst thing that can happen is if we
6 both talk over one another, okay?

7 And just one final comment is huh-huh's
8 and uh-huh's are hard for Barb to take down, so
9 if you can pronounce and pronounce with your
10 response as best you can.

11 A. Okay.

12 Q. So as line superintendent since 2012,
13 can you describe for us your job
14 responsibilities, generally?

15 A. Typically, I make sure that the
16 operation side is moving forward, the guys have
17 the work lined out ahead of them. If there's
18 any problems, then I try to address them. I
19 also help with some of the staking because we
20 are a small cooperative. That's kind of the
21 main parts of it.

22 Q. Staking, that is for new construction?

23 A. Uh-huh.

24 Q. That's a yes?

25 A. Yes.

1 Q. Operations include vegetation
2 management?

3 A. That's correct.

4 Q. Do you have a written job description?

5 A. I believe so.

6 Q. What would that document be called?

7 A. I haven't had a review for a little
8 while, so I can't think of what the title would
9 be, but it would probably be line superintendent
10 job description, I guess.

11 Q. Okay. Have you had a chance to look at
12 that the last few months?

13 A. I have not.

14 Q. If we looked at it if we had it here in
15 front of us, do you know how many pages it is?

16 A. Probably three, maybe.

17 Q. Is it, then, I assume arranged in
18 categories?

19 A. I would believe so.

20 Q. And do you know how many categories?

21 A. No, I do not.

22 Q. Would one of those categories be
23 vegetation management?

24 A. Most likely not.

25 Q. What does vegetation management fall

1 hierarchy?

2 A. I am not.

3 Q. What -- in the organization of Beartooth
4 Electric Cooperative how are your employees
5 taught about safety?

6 A. We have a safety meeting almost every
7 month with MECA, which is a group of co-ops in
8 the State of Montana and Wyoming, and I believe
9 in Idaho, and they come in. We have safety
10 topics that we go through and we spend about six
11 or seven hours, pretty much once a month, going
12 through the topics from first aid to CPR to
13 lockout/tagout, all the way to hurt man rescue
14 on the pole.

15 Q. Are all employees required to attend
16 these safety meetings?

17 A. That's correct.

18 Q. Are you a presenter at these meetings?

19 A. I am not.

20 Q. Is vegetation management a topic of
21 these safety meetings?

22 A. Tree trimming is because of the chain
23 saw safety, but not much more than that.

24 Q. Were you aware as line superintendent in
25 November of 2021 that tree or tree branches

1 contacting power lines could ignite a fire?

2 A. Yes.

3 Q. You've been with Beartooth since 1994.
4 Over that period of time I assume that you're
5 familiar with occasions when there has been
6 contact between a power line and a tree?

7 A. That's correct.

8 Q. That the result of that contact has been
9 a fire?

10 A. That's correct.

11 Q. That's something that occurs from time
12 to time in your operations?

13 A. It does.

14 Q. Something that you try to avoid. It's a
15 risk that you wish to avoid, if you can, as a
16 company, and I'm referring to your company,
17 Mr. Elton, not you personally, but I assume you
18 hold the same principles?

19 A. I do.

20 Q. Because, again, it goes back to the
21 safety of the public, correct?

22 A. That's correct.

23 Q. And wildfires are dangerous?

24 A. They are.

25 Q. They can be lethal?

1 A. They can.

2 Q. They can destroy property?

3 A. They can.

4 Q. They can put people at risk?

5 A. They can.

6 Q. Beartooth, over the years, even in the
7 last several years has experienced some pretty
8 big fires, wild fires; is that correct?

9 A. I don't know if I can agree with that.

10 Q. Fair. Was there a fire up by Columbus,
11 Montana?

12 A. Yes, there was.

13 Q. Did that fire, was that ignited by a
14 tree?

15 A. That was a secondary line through a
16 tree, yes.

17 Q. A secondary line would also be known as
18 a distribution line?

19 A. That's not correct.

20 Q. What -- what's the difference?

21 A. Secondary line is a voltage of less than
22 600 volts.

23 Q. A tap line?

24 A. No. It would still be a service line or
25 a secondary line.

1 Q. And Beartooth maintains a consistent
2 clearance distance for its lines; is that
3 correct?

4 A. We do.

5 Q. Does that clearance distance differ
6 between transmission and distribution lines?

7 A. It does.

8 Q. Does it differ between distribution and
9 tap lines?

10 A. They are one in the same, but
11 distribution and secondary or service, yes, they
12 are different.

13 Q. The line that is in question here that
14 we're going to be talking about at 197 Louis
15 L'Amour Lane at Clark, Wyoming, would that be
16 viewed by you as a service line, a tap line?

17 A. That would be a distribution.

18 Q. So it is a distribution line of how many
19 KVs?

20 A. 7.2.

21 Q. That is a line you're familiar with?

22 A. It is.

23 Q. Is it a line that Beartooth installed or
24 built, constructed?

25 A. Yes.

1 Q. Are you familiar with the cottonwood at
2 197 Louis L'Amour Lane?

3 A. I am.

4 Q. It is a cottonwood that you inspected on
5 November 16th of 2021?

6 A. That is correct.

7 Q. Is that the first time that you saw that
8 tree?

9 A. I have been by that tree previous years,
10 just through work, and that tree has been
11 trimmed at some point. I have not trimmed that
12 tree personally, but I do know the tree.

13 Q. Are you suggesting -- strike that. Let
14 me start here: Are you familiar with the burned
15 branches on that tree?

16 A. I am.

17 Q. You took photographs of it, I presume?

18 A. I did.

19 Q. It was something that was of interest
20 that drew your attention in your inspection on
21 November 16th?

22 A. It is.

23 Q. And you took those photographs for the
24 purpose of documenting what you saw?

25 A. I did.

1 Q. Because you had the -- at least some
2 idea that there may have been conductor-tree
3 contact the evening before on the 15th of
4 November?

5 A. I did.

6 Q. And that that tree-conductor contact may
7 have ignited what is now known as the Clark
8 fire?

9 A. That's correct.

10 Q. And your purpose of documenting what you
11 saw through the photographs was to pass that
12 information on to your supervisor, Kevin Owens?

13 A. That's correct.

14 Q. And you saw -- or excuse me -- you
15 provided those photographs that day on
16 November 16th?

17 A. I took the photographs with the manager
18 on site.

19 Q. So he was there and saw what you saw?

20 A. That's correct.

21 Q. That was the second time that you came
22 back that day?

23 A. That's correct.

24 Q. We're going to get into more detail
25 about that, but was there anybody else with you

1 you said was how many volts?

2 A. 7.2.

3 Q. 7.2. And how was that line constructed?

4 A. That was a -- I believe it was an A-9
5 framing, so it meant it had a cross arm with a
6 phase conductor on the east side of the pole and
7 a neutral conductor on the west side.

8 Q. And does a neutral carry current?

9 A. Neutral will carry current.

10 Q. Does it regularly carry current?

11 A. It can.

12 Q. Was it on the night of November 15,
13 2021?

14 A. The phase wire carries voltage. The
15 phase wire had voltage the night of 2021. The
16 neutral -- the ground wire probably had some
17 current return on it the night of 2021.

18 Q. Thank you.

19 I want to go back and make sure I have
20 an understanding of the clearance standards for
21 vegetation on the Beartooth system.

22 Fifteen feet is what you testified to as
23 to transmission lines?

24 A. That's correct.

25 Q. It is 15 feet from the conductor to the

1 vegetation?

2 A. That's correct. The phase conductor.

3 Q. The phase conductor. And for
4 distribution it is 10 feet?

5 A. That is correct.

6 Q. And it's 10 feet from the outside
7 conductor to the vegetation?

8 A. From the phase conductor, yes.

9 Q. Are those standards reflected in
10 Exhibit 3, Exhibit B, the contract?

11 A. That's correct.

12 Q. Is it your testimony that Exhibit B is
13 consistent with the standard that you just told
14 me?

15 A. Yes.

16 Q. I would like you then to page back into
17 the contract on Page 3. That would be Page 3 of
18 the document. It is Bates stamped 46.

19 MR. BONA: Are we on Exhibit 3?

20 MR. BARKER: We are.

21 MR. BONA: Thank you.

22 BY MR. BARKER:

23 Q. Do you see Item D, healthy trees?

24 A. Yes.

25 Q. Would the cottonwood that you observed

1 back on your testimony up to this point in time,
2 you've answered my questions. There's not
3 anything that you would want to change right
4 now; is that correct?

5 A. No.

6 Q. You have answered the questions to the
7 best of your ability?

8 A. I have.

9 Q. And you've been truthful?

10 A. Yes.

11 Q. And you've been honest?

12 A. Yes.

13 Q. And you've been complete, to the best of
14 your ability?

15 A. Yes.

16 Q. We were talking about clearance distance
17 when we went to break, and just to try to tie
18 this up, I'd like you to refer to Exhibit 3,
19 Exhibit B. Exhibit B is a diagram that
20 apparently is fairly common -- commonly used in
21 your industry; is that correct?

22 A. It is.

23 Q. It's a document that's -- is at least
24 purported to reflect what is called RUS
25 standards, correct?

1 A. Uh-huh.

2 Q. Yes?

3 A. Yes.

4 Q. RUS is Rural Utilities Service?

5 A. Yes.

6 Q. And Rural Utilities Service is a federal
7 agency or at least federally regulated; is that
8 true?

9 A. Yes.

10 Q. In your career with Beartooth since
11 1994, you've been familiar with what RUS is,
12 generally?

13 A. Yes.

14 Q. As you have risen through the ranks and
15 ascended to your position of line
16 superintendent, I imagine that you've probably
17 become more familiar as you have progressed up
18 the ladder?

19 A. Yes.

20 Q. To the point now you're generally very
21 familiar with what RUS standards are?

22 A. Yes.

23 Q. And RUS standards is something, as an
24 operations person, that you deal with probably
25 every day in your work?

1 A. Weekly.

2 Q. At least weekly. On Exhibit B there is
3 a -- distances that seem to be diagrammed
4 between vegetation and a power line?

5 A. Yes.

6 Q. And if you start at the top of the
7 exhibit and work our way down, the first
8 distance that is defined -- or it seems to be,
9 but that is why I am asking you the question, is
10 that is 30 feet; is that correct?

11 A. It is, but this is a three-phase line.
12 The line in question is a single-phase line.

13 Q. So Exhibit B wouldn't apply to the Line
14 Creek area?

15 A. It would, but this exact example is a
16 three-phase line.

17 Q. When you say "three-phase," what does
18 that mean?

19 A. It means there is three opposing phases
20 on top the arm, and then the neutral is framed
21 down.

22 Q. Okay. And so those of us who are lay
23 people when it comes to electricity, can you
24 tell us in layperson's language what three
25 phases means?

1 Does that mean that there are three
2 conductors?

3 A. There would be four conductors.

4 Q. Okay. And meaning two conductors on
5 either side of the arm?

6 A. One conductor on either side of three
7 phase, and then one in the middle and then the
8 neutral is framed down.

9 Q. When you say "framed down," what does
10 that mean?

11 A. It is below. That is what this diagram
12 shows.

13 Q. Show me where that should --

14 A. The neutral would be about where the ten
15 is. And I did misspeak. It is 10 feet from the
16 pole, and I think I said 10-foot from the
17 conductor.

18 Q. Let me just ask you a question of
19 whether you had anything that you needed to
20 change in your testimony and you testified no?

21 A. And I am looking at the diagram right
22 now, and I think I told you it was 10 feet from
23 the conductor.

24 Q. You did.

25 A. I did.

1 Q. It is in the record under oath. Now
2 you're saying that is changed?

3 MR. BAILEY: Yeah, he says he made a
4 mistake.

5 THE WITNESS: I believe I misspoke when
6 I said 10 feet from the conductor.

7 BY MR. BARKER:

8 Q. Did that change as a result of what?

9 A. It changed when I was sitting here when
10 you were having me look at the diagram.

11 Q. Okay. So if we were looking at the line
12 that we're talking about -- so if we're looking
13 at the Hutton property and looking at the line
14 and the tree, the cottonwood that we have been
15 talking about, is on the other side of this pole
16 in Exhibit B, so it would be looking basically
17 north to south, right?

18 A. Yes.

19 Q. If you can just put that in your mind's
20 eye.

21 A. Yes.

22 Q. So on the west side of the structure,
23 there's how many conductors?

24 A. One.

25 Q. Is that conductor, what -- would it

1 carry electricity?

2 A. Is a neutral or ground conductor.

3 Q. Does it carry electricity?

4 A. It carries return current.

5 Q. If this is the question: How much
6 return current?

7 A. We don't know. You won't know what the
8 return current is.

9 Q. Then on the other side of the conductor,
10 that would be on the east side -- excuse me --
11 on the east side of the cross arm, there's
12 another conductor; is that correct?

13 A. That's correct.

14 Q. And what is that conductor called?

15 A. That is a phase conductor.

16 Q. And what's the definition of a phase
17 conductor?

18 A. Phase conductor carries voltage.

19 Q. And in this case the 7.2?

20 A. 7.2 KW or KV -- I'm sorry.

21 Q. KV. Kilovolts?

22 A. Yes, that's, correct.

23 Q. So if we go to, then -- bear with me
24 here. Before we leave this exhibit, then down
25 below the conductor -- excuse me. Down below

1 the cross arms in this diagram there's -- it
2 says: 10 feet.

3 Do you see that?

4 A. I do.

5 Q. Ten feet, and then what is the rest of
6 it?

7 A. I believe it is 10-foot minimum, and I
8 can't tell you with this copy what the 10-foot
9 dash -- I can't tell you what is next to that.

10 Q. From your prior experience and
11 familiarity with this exhibit, would you say
12 that is 10-foot minimum?

13 A. Yes.

14 Q. Okay. And it is your testimony now that
15 that is 10 feet from the center of the pole to
16 the vegetation?

17 A. That's correct.

18 Q. The center of the -- strike that.

19 What is the length -- or the width of
20 the cross arm?

21 A. The cross arm as an 8-foot arm.

22 Q. Is that standard?

23 A. That is for single phase.

24 Q. And so then what's the clearance
25 distance then? Can you do the math for me?

1 A. Minimum is 6 feet.

2 Q. When you say minimum, what does that
3 mean?

4 A. We would like to see it no less than
5 6 feet to the conductor.

6 Q. Should it be 7 feet?

7 A. Anything more than six would be -- meet
8 the requirement.

9 Q. So whatever the clearance standard is,
10 it has to be -- the intent is, at least, as I
11 understand it, is that Beartooth wants this to
12 be a safe line that is free from vegetation
13 contact until the next trim cycle comes up,
14 correct?

15 A. We do.

16 Q. The next trim cycle would be, according
17 to your testimony, in five years.

18 A. That's what we hope for, yes.

19 Q. So if it was trimmed in 2021, your hope
20 in 2021 was that this clearance distance would
21 last until 2026?

22 A. That is correct. We trimmed Wyoming in
23 2018, which would have put up us back to this
24 year as being the end of -- or the start of a
25 new cycle.

1 Q. And so you didn't know the extent of the
2 work that Asplundh was going to have to do on
3 Line Creek?

4 A. I knew Line Creek wouldn't take a whole
5 lot of work because there is not a whole lot of
6 trees up Line Creek. It is not a big area. It
7 is not a lot of vegetation up Line Creek. When
8 I sent them over there I gave them a map of Line
9 Creek. They know Line Creek, and I said, Start
10 at the bottom, work your way to the top.

11 Q. Meaning, starting at the east and go to
12 the west?

13 A. Yes. Complete all of the tree trimming
14 in Line Creek.

15 Q. And so did you go over there with
16 somebody from Asplundh?

17 A. I did not.

18 Q. Did Asplundh, to your knowledge, send
19 out somebody to do a pre-contract or pre-trim
20 inspection?

21 A. I believe Perry did.

22 Q. Why do you believe that?

23 A. I have asked Perry to treat -- to
24 permission everything in front of the crew so
25 that the crews aren't taking time to permission,

1 A. When they were up there trimming.

2 Q. When were they up there trimming?

3 A. I believe it would have been -- it was
4 in August, I believe, possibly the beginning of
5 August.

6 Q. Are you relying on memory or a written
7 record?

8 A. I am trying to rely on memory and that's
9 why I don't have the exact date.

10 Q. Do you keep any log or memos in your
11 position as line superintendent of what your
12 tree trimmers' activities are from day to day?

13 A. Their time cards or their time sheets
14 are fairly vague. It is an area. It's not down
15 to a location. Typically, it's trimmed Line
16 Creek or trimmed Wyoming. It's not exact
17 address.

18 Q. I am familiar what you're referring to,
19 but that -- what you're referring to is a time
20 card that is produced by Asplundh, correct?

21 A. That's correct.

22 Q. I am asking you if you keep a record?

23 A. I do not.

24 Q. Do you keep a log? Do you keep any kind
25 of record of what your daily activities are as

1 page, Page 14 of Exhibit 54, and again Bates
2 1508. It says at the bottom of the page under
3 the line 4, if you see that, it says: Wyoming,
4 correct?

5 A. Yes.

6 Q. Describe for us what this document is?

7 A. This is the time sheets that they submit
8 to our accounts payable department.

9 Q. Is this a form that Asplundh provides or
10 Beartooth?

11 A. Asplundh.

12 Q. So we can see that the three crew
13 members, at least in August of 2021, were Kelly
14 McCain, Charles Rowe, and Perry Toler, correct?

15 A. Correct.

16 Q. Kelly McCain was the trainee; is that
17 right?

18 A. Like I mentioned earlier, I am not
19 exactly sure. I don't believe she is a trainee.
20 I believe she is a trimmer, but -- and I could
21 be wrong on that.

22 Q. Well, again, there is reference in this
23 Document 54.

24 A. Reason I say that, it even says under
25 the comments, Kelly should be paid foreman's

1 us. They have worked on Line Creek more than
2 one day, I guess is what I am saying. And on
3 this day they told us 8/26 they did trim on Line
4 Creek, but that is not the only day that they
5 trimmed Line Creek.

6 Q. Well, I'm -- okay. So I am trying to --
7 let's just take this step by step, okay?

8 A. Okay.

9 Q. So Asplundh crew goes in on Line Creek
10 sometime in 2021, correct?

11 A. Uh-huh.

12 Q. Yes?

13 A. Yes.

14 Q. Most likely that was the month of August
15 of 2021, true?

16 A. I believe so.

17 Q. To the best of your knowledge, it wasn't
18 prior to August?

19 A. I can't answer that because I don't
20 remember. Perry would have permissioned ahead
21 of the crew, and I do in remember that Chuck and
22 Perry spent several days up there. Christy, I
23 don't remember if she was there for the whole
24 duration or not.

25 MR. BAILEY: Kelly.

1 Q. So we're left to that. Does that -- is
2 that the map though?

3 A. This is.

4 Q. And is it your testimony that this map
5 shows every service location of all of Line
6 Creek?

7 A. It does.

8 Q. Can you show us where the Hutton
9 property is?

10 A. Yes.

11 Q. Can you take this highlighter and refer
12 us to the page where the Hutton property is
13 located?

14 A. It's Page 4 of 4.

15 Q. Okay. Could you just highlight that for
16 us. The Hutton property?

17 A. The Hutton property itself?

18 Q. Yes.

19 A. I think it's actually going to be right
20 on this line.

21 Q. Would you take this pen and diagram for
22 us -- or just write Hutton.

23 And the Hutton property is 197 Louis
24 L'Amour Lane?

25 A. Yes.

1 Q. Do you know if it did in July of 2021?

2 A. I can't answer that.

3 Q. Did you have discussions with members of
4 the crew that Mr. Toler or Mr. Rowe or
5 Ms. McCain in that time period about -- about
6 what the map depicted?

7 A. I believe so. For Kaaren to set up the
8 logins, we would have had discussions on how to
9 get into the mapping and what to do to get to
10 the mapping to see it.

11 Q. Logically, they wouldn't need updates of
12 the map unless -- and login information unless
13 they were accessing it, correct?

14 A. That's correct. When I sent them to
15 Line Creek, Line Creek is a -- were the only
16 lines there. I asked them to trim all of Line
17 Creek.

18 Q. And who did you give that direction to,
19 specifically?

20 A. I can't tell you if it was Perry or
21 Chuck because I talked to Perry quite a bit
22 because Perry would permission it in front of
23 Chuck.

24 Q. Was there any question about the area
25 that Asplundh was to trim in Line Creek?

1 A. Absolutely not.

2 Q. Where there was an electrical line
3 overhead they were to trim?

4 A. Correct.

5 Q. That is the generally the direction that
6 you gave them?

7 A. That is correct.

8 Q. Go forth and trim?

9 A. I said trim Line Creek. That is the
10 only place we haven't been. And they knew where
11 Line Creek was. There was no question. They
12 were at Hutton's property, there was no question
13 of that, when they called to -- I know I had a
14 conversation about the locked gate.

15 Q. Do you know when that conversation --

16 A. I do not.

17 Q. Do you -- are you able to estimate that
18 that conversation took place sometime in the
19 timeframe indicated by Exhibit 54, that would be
20 the latter part of August of 2021?

21 A. I cannot recall but I can remember
22 having a conversation with Perry about it.

23 Q. Did you direct Perry to talk to Pam
24 Nelson, the caretaker of the Hutton property?

25 A. I did not. I gave him -- I believe we

1 A. That's correct.

2 Q. Or at least the version that existed at
3 that time?

4 A. That's correct.

5 Q. And you brought up, and you were able to
6 zero in on it, the Hutton property?

7 A. That's correct.

8 Q. And specifically 197 Louis L'Amour Lane?

9 A. That's correct.

10 Q. It's the green dot that is marked on
11 Exhibit 89 that you drew a line to overhead tap
12 to Hutton property?

13 MR. BAILEY: Go ahead.

14 THE WITNESS: To the best of my
15 abilities with the map that I have in front of
16 me, that is correct.

17 BY MR. BARKER:

18 Q. Understand. And you're telling them,
19 based upon the fact that you have been out there
20 that day, correct?

21 A. That's correct.

22 Q. At least twice?

23 A. That's correct.

24 Q. That what you saw was evidence of
25 conductor-tree contact?

1 A. That is correct.

2 Q. As a result of what you and Mr. Owens --
3 because Mr. Owens was with you, right?

4 A. The second time, yes.

5 Q. Yes. As a result of what you and
6 Mr. Owens saw, there was a discussion or at
7 least some type of processing in your mind that
8 you needed to call these two gentlemen?

9 A. Yes.

10 Q. Did Mr. Owens know you were going to be
11 calling them?

12 A. I believe so.

13 Q. Did you have a discussion with him about
14 that?

15 MR. BAILEY: With Mr. Owens?

16 MR. BARKER: With Mr. Owens.

17 THE WITNESS: I can't say exactly. I
18 would say we spent all afternoon together down
19 there and we had a lot of conversations and I am
20 going to say yes, I told him I would be calling
21 the tree trimmers in.

22 BY MR. BARKER:

23 Q. Apparently, not a man to waste time, you
24 did it that day?

25 A. I did.

1 morning after. But I'm pretty sure it was the
2 next morning. We were back over there, me and
3 him, and taking more pictures and looking at
4 more of it.

5 Q. Now, I'm getting a little bit ahead of
6 myself. So I want to backtrack just a little
7 bit to make sure by that time you had observed
8 that -- the tree, the cottonwood, true?

9 A. Yes.

10 Q. And you had taken pictures of it?

11 A. Yes.

12 Q. And you'd taken pictures of the
13 conductor?

14 A. I did, from the ground.

15 Q. To the best you could?

16 A. Yep.

17 Q. But what you observed in the tree was at
18 least what appeared to you to be burn marks?

19 A. That is correct.

20 Q. And a branch that appeared to be broken?

21 A. There was a branch that was blackened.

22 Q. And a conductor that appeared to have
23 marks on it as well?

24 A. Yes.

25 Q. Marks that would indicate to you, as an

1 experienced lineman, that there was contact
2 between a branch and the conductor?

3 A. Yes.

4 Q. The markings on the conductor were
5 distinctive something that you wouldn't expect
6 on a conductor, just an average conductor?

7 A. Yes.

8 Q. Distinctive in what way?

9 A. Blackened.

10 Q. Blackened in the way that it appeared to
11 somebody observing, that it was charcoal or soot
12 or something like that?

13 A. Yes.

14 Q. You made these observations in the
15 morning of November 16th, correct? First? The
16 first time?

17 A. That is correct.

18 Q. We have -- I think if it is easiest for
19 you, certainly is for me, if we just go through
20 it chronologically for that day and then pick up
21 where you have the afternoon meeting.

22 Is that all right?

23 A. That is fine with me.

24 Q. I am going by Exhibit 25.

25 And 25 is a memo that you wrote; is that

1 Q. You haven't measured it to date?

2 A. No, it was. I just don't know what the
3 measurements are.

4 Q. But you didn't do it?

5 A. No, I did not.

6 Q. When you said that you saw arc marks,
7 describe for us, if you were describing this to
8 a jury, how you would define it or describe it?

9 A. Tree branch that was missing or had
10 smouldered back to a stub and a black soot mark
11 on the power line.

12 Q. And Mr. Owens was there while you made
13 these observations?

14 A. He was.

15 Q. You told him exactly what you were
16 seeing?

17 A. I did, and Kevin really struggled that
18 there was absolutely no way that could have
19 happened because, same thing in his mind, how
20 would it have done -- the winds must have been
21 beyond horrific to do that, and I can't say what
22 he was thinking, but in my mind it's -- we
23 needed to start there.

24 And for several days he was convinced
25 that it definitely couldn't have been, because

1 Q. Based upon what your personal
2 observation was and your memory and the
3 photographs, are you able to give us a close
4 approximation?

5 A. I can give you a 10-foot area.

6 Q. That's okay. That is good enough.

7 So you're looking at Exhibit -- excuse
8 me, Photograph 17 of Exhibit 90? And you're
9 drawing a circle?

10 A. Yes.

11 Q. Or an oval? Okay. Would you initial
12 that too? Okay.

13 And within this area, what would you
14 be -- what would we be seeing if we were there
15 that day, that time looking at the conductor,
16 knowing it is against the blue sky and the
17 photograph is limited?

18 What would we be seeing?

19 A. Four- or 5-inch carbon black spot.

20 Q. Now, the line where you drew the oblong
21 circle is that line the neutral line or is it
22 the --

23 A. It is phase conductor.

24 Q. The phase conductor. Meaning the one
25 that carried the electricity?

1 A. That is correct.

2 Q. That was the phase that was closest to
3 the tree?

4 A. That is correct.

5 Q. Does it make any difference if the tree
6 was on the other side of the power line and it
7 contacted the neutral conductor, what would
8 happen?

9 A. Nothing.

10 Q. So the phase conductor is the one that
11 if there is going to be contact would generate
12 what you're seeing, a blackened branch and a
13 blackened conductor?

14 A. That's correct.

15 Q. So you also took photographs of where
16 the fire appeared to have started; is that
17 correct?

18 A. That's correct.

19 Q. That is also within these photographs,
20 at least 29?

21 A. Yes.

22 Q. Would you be able to identify the one
23 you think describes or depicts most accurately
24 what you saw in that area?

25 A. Well, the problem I had is I am not a

1 Q. That was because you believed that that
2 tree should have been trimmed under the terms of
3 the contract?

4 A. In my opinion, yes.

5 Q. And also it's your opinion that that
6 tree-conductor contact is what ignited the Clark
7 fire?

8 MR. BONA: Calls for speculation. Calls
9 for expert opinion, incomplete hypothetical.

10 THE WITNESS: My opinion is that the
11 tree was 4 to 5 feet away, and the wind was
12 blowing 140 miles an hour, and it pushed the
13 conductor over to the tree.

14 BY MR. BARKER:

15 Q. What evidence do you rely upon to say
16 that the wind was blowing at 140 miles an hour?

17 A. Nate Hoffert, who I know fairly well
18 just from working through Beartooth, he stopped
19 us over at the entrance to Line Creek later that
20 day when I was with Mr. Owens, and Nate had
21 commented on that. His father, Dave, later told
22 me that they had -- he has never seen anything
23 like it. It blew down grain bins three miles
24 from there. It blew the repeater off of the
25 butte that night, and so there was no two-way

1 don't have any -- I don't have Weather
2 Underground. I don't know what it is. I do
3 know another home was blown in that night or it
4 was a total loss. The wind had imploded it, not
5 too far from where we were in Montana, as Line
6 Creek is actually very close to the state line.
7 Just across the state line there was a home that
8 was demolished, so I do know that it was fairly
9 horrific.

10 Q. The front range of the Beartooth through
11 Cody to Clark to Belfry, that general area is
12 known as a high wind area, correct?

13 A. I would say so.

14 Q. Because it's known as that, that is
15 something that you knew as superintendent of
16 operations for Beartooth, correct?

17 A. I don't know about Cody, but I can speak
18 for the Clark area as a high wind area.

19 Q. Has a history of high winds?

20 A. I would say so.

21 Q. And that -- because you know that
22 history, that is part of the local factors that
23 you need to take into consideration for purposes
24 of your vegetation management, correct?

25 A. I don't know how anybody plans for a

1 wind event that is that great. I don't know how
2 to answer that.

3 Q. When the wind blows, depending on its
4 intensity, the wind will blow trees, right?
5 They will move.

6 A. Uh-huh.

7 Q. True?

8 A. That's correct.

9 Q. If it blows with enough intensity, it
10 will move conductors, true?

11 A. That is correct.

12 Q. And that's something that as line
13 superintendent you know?

14 A. I do know that, yes.

15 Q. So something that we observe as -- in
16 terms of the conductor and a branch relationship
17 on a day that is calm may be different on a day
18 when the wind blows?

19 A. That is correct.

20 Q. You're familiar with RUS standards for
21 line clearance?

22 A. I am.

23 Q. We talked about that earlier, correct?

24 A. We did.

25 Q. And under the RUS standards, it is

1 required that your vegetation management policy
2 is take into consideration local conditions,
3 true?

4 A. Yes.

5 Q. Local conditions, meaning not only
6 weather conditions, but also the growing pattern
7 of the vegetation?

8 MR. BONA: Calls for speculation.

9 BY MR. BARKER:

10 Q. Correct?

11 A. That's correct.

12 Q. And, for example, you pointed out in
13 your earlier testimony that there's some areas
14 of the Beartooth system that -- where the
15 vegetation of the trees grow faster than other
16 areas, true?

17 A. That's correct.

18 Q. In this particular case, the cottonwood
19 at 197 Louis L'Amour Lane, cottonwoods like
20 water, correct?

21 A. Yes.

22 Q. They will -- their growing pattern
23 depends upon the availabilities of moisture,
24 true?

25 A. Correct.

1 soon as possible to take care of it.

2 Q. My question was a little bit different
3 than that. My question was: The reason why
4 there is clearance standards is to prevent
5 danger?

6 A. Correct.

7 Q. To prevent a wildfire, as well as
8 interruption of services?

9 A. Correct.

10 Q. We talked a little bit with Mr. Owens
11 about the meters that are set at the houses --
12 at the homes -- the -- what should I call them?
13 The residences? They are customers, consumers?

14 A. Consumers.

15 Q. Okay. Your consumers. He referred to
16 something like a smart meter?

17 A. They can be called a smart meter.

18 Q. Okay. Is that what they are in Clark?

19 A. Yes, depending on what your definition
20 of a smart meter is. I would call them a smart
21 meter. They're a two-way communication, so yes.
22 There is different kind of smart meters. There
23 is RF; they use a radiofrequency. We do not do
24 that. We are a power line carrier, which is the
25 big difference.

1 Q. The contract provides for that or allows
2 for it, correct?

3 A. It does.

4 Q. You check the accuracy of their
5 trimming.

6 Is that something that you do?

7 A. I am one of them, yeah. There is
8 several of us can do it, but like I said
9 earlier, we don't -- we don't check every tree
10 that they trim. We put them on a feeder, an
11 area or a line, and we let them trim it, and if
12 there is any questions or problems then we try
13 to help them address it, if it is a landowner or
14 something.

15 We don't inspect every tree that they
16 do. We do spot inspections to check areas. We
17 took -- we took the idea that Line Creek was
18 trimmed correctly at that point, and I did not
19 make a drive over there to inspect every tree
20 that they had trimmed.

21 Q. Did you send an employee to do spot
22 inspections?

23 A. No. Well, we do spot inspections. Line
24 Creek was not one of them we inspected with the
25 tree trimmers or after the tree trimmers.

1 the contract that Asplundh had executed with
2 Beartooth, correct?

3 A. I do.

4 Q. And you knew on that day that you had
5 had a meeting with Mr. Rowe and Mr. Toler in
6 your office, correct?

7 A. Yes.

8 Q. That they had told you that they had
9 looked at the tree -- or at least Mr. Toler did,
10 and questioned why they hadn't trimmed it, and
11 expressed that opinion in that meeting, correct?

12 A. Yes.

13 Q. None of those things you told Mr. Ruth
14 on January 17th at 2022, correct?

15 A. That's correct.

16 Q. You also were aware on that day that the
17 branch stub had charcoal on it, burn marks. The
18 conductor above it had burn marks and that a
19 branch had been located with a burned end.

20 You knew all that, right?

21 A. That's correct.

22 Q. Did you tell Mr. Ruth or those others
23 present about any of that?

24 A. There was a -- there was some kind of a
25 PowerPoint or a -- some presentation that Kevin

1 Q. When you're speaking of the grain bins
2 being blown in, where was that?

3 A. Just east of Clark, right by the fish
4 hatchery, close to the repeater.

5 Q. Where -- and the house that was blown
6 in, where was that?

7 A. It was north of the state line just a
8 few miles. So not real far from Line Creek.

9 Q. Belfry?

10 A. Not to Belfry. Just across the state
11 line, just a little ways as the crow flies
12 from...

13 Q. If you're experienced with the wind up
14 there, as you have been, you know that the wind
15 speed can vary from drainage to drainage
16 substantially, correct?

17 A. Yes.

18 Q. What may be a wind speed over the hill
19 may not be the wind speed where you're standing
20 at the moment correct?

21 A. That could be.

22 Q. The house that blew in, was it a
23 stick-built house?

24 A. It was a house that we actually had
25 moved through our territory above somebody that

1 A. Less than that.

2 Q. Or less than, yeah.

3 A. That is what we like to see, for sure.

4 Q. Like to see, but it says minimum?

5 A. That is what we ask them to do.

6 Q. But Beartooth, at least in 2021, didn't
7 do anything to check to see if that's what was
8 done, correct?

9 A. Not at the Hutton property.

10 Q. With respect to the Hutton property, you
11 said that there is a number of trees that needed
12 to be trimmed on the entire Hutton property,
13 correct?

14 A. That is correct.

15 Q. A fairly -- I think you said, a fairly
16 large number of trees?

17 A. Just beyond the Hutton property, yes,
18 there is a grove of aspens, yes.

19 Q. Including on the Hutton property, the
20 camp property, correct?

21 A. There is only just a couple trees on the
22 camp property that would ever be impacting the
23 power line, yes.

24 Q. Including the subject tree?

25 A. That is correct.

1 Q. And the subject tree should have been
2 trimmed?

3 MR. BONA: Calls for speculation.
4 Misstates prior testimony.

5 THE WITNESS: I would say yes.

6 BY MR. BARKER:

7 Q. You mentioned something with respect to
8 the 50 to 60 trees about flat tops.

9 What is a flat top?

10 A. Sometimes the tree trimmer, if they --
11 they will trim the tree, will cut the tree in
12 half.

13 Q. The main --

14 A. Yeah. And we call them a flat top.
15 They do that. It's just one of the ways you can
16 trim.

17 Q. You mentioned that you now meet with
18 your crews, your trimming crews, at the
19 beginning of their --

20 A. I went out with them yesterday.

21 Q. And you do -- your meeting with them is
22 different than what you did prior to 2021?

23 A. It is, because now I will hand them the
24 contract, and it talks exactly about the stump
25 height and the clearances that we expect. There

1 A. White.

2 Q. The pickups, are they white as well?

3 A. They are.

4 Q. And do your crews wear shirts that have
5 Beartooth insignia on them?

6 A. Yes.

7 Q. Is that a company policy?

8 A. We try to have all the shirts that the
9 guys wear with our logo and our name on them,
10 yes.

11 Q. And so a consumer would be able to
12 readily identify a Beartooth employee?

13 A. I would say so, yes.

14 Q. In the meeting that you had with Toler
15 and Rowe in your office on the 16th of November,
16 you were asked whether you told them to -- that
17 they should have trimmed or not trimmed. You
18 didn't express an opinion one way or another
19 about whether they should trim?

20 A. I believe they should have.

21 Q. I think counsel was asking some
22 questions, and I got confused.

23 Did you tell them at that time, at that
24 moment in your office, they should have trimmed
25 that tree?

1 A. I did not. I told them they need to get
2 legal counsel, talk to their manager.

3 Q. As a result of that, were you implying
4 that they damn well should have trimmed that
5 tree?

6 A. Yes.

7 Q. Kevin Owens drives a private pickup
8 sometimes?

9 A. Probably very seldom.

10 Q. On the 16th of November did he drive his
11 personal pickup?

12 A. No, we took mine.

13 Q. Okay. And yours, again, is?

14 A. Company truck.

15 Q. White?

16 A. White.

17 Q. Does Kevin Owens drive a black pickup?

18 A. He does not.

19 Q. We're trying to identify the black
20 pickup that was on site?

21 A. We have no idea.

22 Q. You haven't figured it out either?

23 A. No.

24 Q. When you figure it out, will you let us
25 know -- let your counsel know?

1 2021 the summer of 2021?

2 A. I do not believe I do.

3 Q. That is all the questions I have. Hang
4 on just a second.

5 EXAMINATION

6 BY MR. BONA:

7 Q. Do you remember what time on the 16th
8 you first went to the Hutton property?

9 A. I went early morning because when my
10 journeymen called and said that he heard from
11 one of the firemen that there was a fatality, I
12 left right then.

13 Q. So it was before you talked to Chuck and
14 Perry?

15 A. Yes.

16 Q. But you hadn't measured the limb to see
17 how close it was?

18 A. No.

19 Q. And in your mind, when you went and
20 looked at it, you thought that limb needed to be
21 trimmed?

22 A. I would have thought so, yes.

23 Q. And is that because you know a fire
24 happened?

25 A. No. Because I know that the power line

1 was there and the tree was closer than it should
2 have been, and we had them go up and trim that
3 area. My thought was they should have trimmed
4 that tree.

5 Q. Do you know how close the tree -- did
6 you then at that time know how close the tree
7 was?

8 A. No.

9 Q. No more questions.

10 MR. BAILEY: We will read and sign.

11 MR. SANDEFER: I just said he should be
12 able to finish his answer. He started
13 answering.

14 MR. PAHLKE: What he said was it should
15 have been trimmed.

16 THE WITNESS: That is what I said.

17 MR. BAILEY: That is what I thought he
18 said.

19 We will read and sign.

20 MR. BARKER: Today we marked Exhibits 85
21 through 90 sub A, and we have agreed that
22 Barbara, our court reporter, is going to be
23 taking these exhibits and handling them the same
24 way she did the exhibits in the first round.

25 MS. COATES: No. Okay, so we did not